

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WILLIAM E. BISHOP,

Defendant-Appellant.

UNPUBLISHED

December 11, 2003

No. 240833

Wayne Circuit Court

LC No. 01-008104-01

Before: Saad, P.J., and Markey and Meter, JJ.

PER CURIAM.

Defendant appeals by right from his January 17, 2002, jury trial conviction of two counts of assault with a dangerous weapon (felonious assault), MCL 750.82, and one count of possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. Defendant was sentenced to serve a prison term of 2 months to 4 years for each felonious assault count and a consecutive 2 years' imprisonment for the felony-firearm conviction. We affirm.

Defendant first challenges the evidentiary basis for his convictions. Although he frames the issue as a challenge to the great weight of the evidence, the argument provided actually focuses on the sufficiency of the evidence. In determining whether a conviction was based on sufficient evidence, this Court will "view the evidence in the light most favorable to the prosecution and determine whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt." *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992).¹ Elements of an offense may be sufficiently proven by circumstantial evidence or inferences that arise from the evidence. *People v Noble*, 238 Mich App 647, 655; 608 NW2d 123 (1999); *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999).

Defendant also frames the issue as a credibility contest; however, an appellate court will not resolve anew the issue of witness credibility. *Avant, supra*, 235 Mich App 506. Questions of

¹ Amended 441 Mich 1201, 489 NW2d 748 (1992).

credibility are best left to the trier of fact and should not be revisited on appeal. *Id.*; *People v Daoust*, 228 Mich App 1, 17; 577 NW2d 179 (1998).

The elements of felonious assault are (1) a simple assault, made with (2) a dangerous weapon, (3) with actual, apparent, or under the assumption to have the ability to commit a battery, and (4) with the intent to harm the victim or to place the victim in apprehension of an immediate battery. *Avant, supra*, 235 Mich App 505; *People v Grant*, 211 Mich App 200, 202; 535 NW2d 581 (1995); CJI2d 17.9. The evidence established that defendant pointed a loaded rifle at the first victim's chest, fired a shot over that victim's shoulder, and then shot at a tow truck where the second victim was located. Both victim testified that they were fearful of getting shot. We believe that this evidence was sufficient to prove each element of felonious assault beyond a reasonable doubt.

The elements of felony-firearm are (1) commit or attempt to commit a felony and (2) with a firearm in possession. *Avant, supra*, 235 Mich App 505. Because defendant possessed a rifle during the commission of felonious assault, the elements of felony-firearm have also been established.

We also reject defendant's argument that the trial court erred in denying his request to have the jury instructed on the offense of malicious destruction of property under \$1000, MCL 750.377a. The elements of malicious destruction of property under \$1000 are: (1) that the property belonged to someone else; (2) that defendant destroyed or damaged the property; (3) that defendant committed the act knowing that it was wrong, without just cause or excuse, and with the intent to destroy or damage the property; and (4) that the extent of the damage was under \$1000.² MCL 750.377a(1); *People v Hamblin*, 224 Mich App 87, 92; 568 NW2d 339 (1997); CJI2d 32.2. As the elements clearly show, one does not first need to commit malicious destruction of property in order to commit felonious assault. Accordingly, because malicious destruction of property is not a necessarily included lesser offense of felonious assault, the trial court did not err when it denied defendant's request. *People v Mendoza*, 468 Mich 527, 532-533; 664 NW2d 685 (2003); *People v Cornell*, 466 Mich 335, 355; 646 NW2d 127 (2002).

We affirm.

/s/ Henry William Saad

/s/ Jane E. Markey

/s/ Patrick M. Meter

² MCL 750.377a divides the offense into various subdivisions, depending upon the value of the property destroyed. However, defendant's request for a jury instruction did not delineate the property in issue other than to indicate that it was below \$1000 in value.